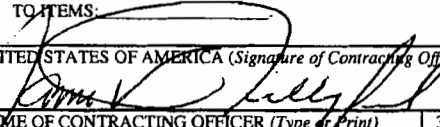



<b>SOLICITATION/CONTRACT/ORDER FOR COMMERCIAL ITEMS</b> OFFEROR TO COMPLETE BLOCKS 12, 17, 23, 24, & 30				1. REQUISITION NUMBER <b>SP0600-05-1334</b>		<b>PAGE 1 OF 9</b>	
2. CONTRACT NUMBER <b>SP0600-05-D-8017</b>		3. AWARD/EFFECTIVE DATE <b>April 14, 2005</b>		4. ORDER NUMBER		5. SOLICITATION NUMBER <b>SP0600-05-R-0402</b>	
6. SOLICITATION ISSUE DATE <b>January 6, 2005</b>		7. FOR SOLICITATION INFORMATION CALL: <b>a. NAME</b> <b>Leslie F. Simpson (703) 767-8536</b>		b. TELEPHONE NUMBER (no collect calls) <b>Phone: See Block 7A</b> <b>Fax: (703) 767-8757</b>		8. OFFER DUE DATE/LOCAL TIME <b>See Page 2</b>	
9. ISSUED BY CODE <b>SP0600</b>  <b>Defense Energy Support Center</b> <b>Electricity Branch, Installation Energy</b> <b>8725 John J. Kingman Road, Suite 4950</b> <b>Fort Belvoir, VA 22060-6222</b> <b>Buyer/Symbol: Leslie Simpson/DESC-APE</b> <b>Email: Leslie.Simpson@dla.mil</b> <b>Phone: (703) 767-8536</b>  <b>P.P. 8.1</b>				10. THIS ACQUISITION IS <input checked="" type="checkbox"/> UNRESTRICTED <input type="checkbox"/> SET ASIDE % FOR <input type="checkbox"/> SMALL BUSINESS <input type="checkbox"/> SMALL DISADV BUSINESS <input type="checkbox"/> 8(A)  <b>NAICS: 221112</b>  <b>SIZE STND: 4 million MWh</b>		11. DELIVERY FOR FOB DESTINATION UNLESS BLOCK IS MARKED <input checked="" type="checkbox"/> SEE SCHEDULE  <input type="checkbox"/> 13a. THIS CONTRACT IS RATED ORDER UNDER DPAS (15 CFR 700)  13b. RATING  14. METHOD OF SOLICITATION <input type="checkbox"/> RFQ <input type="checkbox"/> IFB <input checked="" type="checkbox"/> RFP	
15. DELIVER TO CODE  <b>See Schedule</b>				16. ADMINISTERED BY CODE  <b>See Block 9</b>			
17a. CONTRACTOR/OFFEROR BIDDER CODE		FACILITY CAGE CODE		18a. PAYMENT WILL BE MADE BY CODE			
		<b>1NY39</b>					
<b>MidAmerican Energy Company</b> <b>106 E 2<sup>nd</sup> Street</b> <b>Davenport, Iowa 52801-1150</b>  <b>Telephone No: 563-333-8561</b> <b>Fax No: 515-242-4354</b>				<b>See Paragraph B of Clause C800</b>			
<input type="checkbox"/> 17b. CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN OFFER				18b. SUBMIT INVOICES TO ADDRESS SHOWN IN BLOCK 18a. UNLESS BLOCK BELOW IS CHECKED <input type="checkbox"/> SEE ADDENDUM			
19. ITEM NO.		20. SCHEDULE OF SUPPLIES/SERVICES		21. QUANTITY		22. UNIT	
23. UNIT PRICE		24. AMOUNT					
<b>See Attachment III</b>		<b>See Page 2</b> <b>This document confirms RFP SP0600-05-R-0402 and Amendments 001-010 applies.</b> <i>(Attach additional sheets as necessary)</i>					
25. ACCOUNTING AND APPROPRIATION DATA						26. TOTAL AWARD AMOUNT (For Govt. Use Only) <b>\$21,672,556.98</b>	
<input type="checkbox"/> 27a. SOLICITATION INCORPORATES BY REFERENCE FAR 52.212-1, 52.212-3, FAR 52.212-4 AND 52.212-5 ARE ATTACHED. ADDENDA <input type="checkbox"/> ARE <input type="checkbox"/> ARE NOT ATTACHED.							
<input checked="" type="checkbox"/> 27b. CONTRACT/PURCHASE ORDER INCORPORATES BY REFERENCE FAR 52.212-4. FAR 52.212-5 IS ATTACHED. ADDENDA <input type="checkbox"/> ARE <input checked="" type="checkbox"/> ARE NOT ATTACHED.							
<input type="checkbox"/> 28. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN 1 COPIES TO ISSUING OFFICE. CONTRACTOR AGREES TO FURNISH AND DELIVER ALL ITEMS SET FORTH OR OTHERWISE IDENTIFIED ABOVE AND ON ANY ADDITIONAL SHEETS SUBJECT TO THE TERMS AND CONDITIONS AND CONDITIONS SPECIFIED HEREIN.				<input type="checkbox"/> 29. AWARD OF CONTRACT: REFERENCE _____ OFFER DATED _____ YOUR OFFER ON SOLICITATION (BLOCK 5), INCLUDING ANY ADDITIONS OR CHANGES WHICH ARE SET FORTH HEREIN, IS ACCEPTED AS TO ITEMS:			
30a. SIGNATURE OF OFFEROR/CONTRACTOR				31a. UNITED STATES OF AMERICA (Signature of Contracting Officer) 			
30b. NAME AND TITLE OF SIGNER (Type or Print)		30c. DATE SIGNED		31b. NAME OF CONTRACTING OFFICER (Type or Print) <b>JAMES V. SHILLINGFORD</b>		31c. DATE SIGNED <b>4/14/05</b>	
32a. QUANTITY IN COLUMN 21 HAS BEEN <input type="checkbox"/> RECEIVED <input type="checkbox"/> INSPECTED <input type="checkbox"/> ACCEPTED, AND CONFORMS TO THE CONTRACT, EXCEPT AS NOTED				33. SHIP NUMBER		34. VOUCHER NUMBER	
				<input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL		35. AMOUNT VERIFIED CORRECT FOR	
32b. SIGNATURE OF AUTHORIZED GOVT. REPRESENTATIVE		32c. DATE		36. PAYMENT <input type="checkbox"/> COMPLETE <input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL		37. CHECK NUMBER	
				38. S/R ACCOUNT NO.		39. S/R VOUCHER NO.	
41a. I CERTIFY THIS ACCOUNT IS CORRECT AND PROPER FOR PAYMENT				42a. RECEIVED BY (Print)			
41b. SIGNATURE AND TITLE OF CERTIFYING OFFICER		41c. DATE		42b. RECEIVED AT (Location)			
				42c. DATE REC'D (YY/MM/DD)		42d. TOTAL CONTAINERS	

AUTHORIZED FOR LOCAL REPRODUCTION

STANDARD FORM 1449  
Prescribed by GSAFAR (48 CFR) 53.212

<b>AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT</b>			1. CONTRACT ID CODE		PAGE OF PAGES 1   1		
2. AMENDMENT/MODIFICATION NO.  P00001		3. EFFECTIVE DATE  April 14, 2005		4. REQUISITION/PURCHASE REQ. NO.  N/A		5. PROJECT NO. (If applicable)	
6. ISSUED BY  Defense Energy Support Center 8725 John J. Kingman Road, Suite 4950 Fort Belvoir, VA 22060-6222 Buyer / Symbol: Leslie Simpson / DESC-APE Phone: (703) 767-8536 Fax: (703) 767-8757 Email: <a href="mailto:Leslie.Simpson@dla.mil">Leslie.Simpson@dla.mil</a> Purchase Program 8.1		CODE SP0600		7. ADMINISTERED BY (If other than Item 6)		CODE	
8. NAME AND ADDRESS OF CONTRACTOR (NO., street, city, county, St)  MidAmerican Energy Company 106 E 2 <sup>nd</sup> Street Davenport, Iowa 52801-1150 Telephone: (563) 333-8561 Fax: (563) 333-8748				9a. AMENDMENT OF SOLICITATION NO.			
				9b. DATED (SEE ITEM 11)			
				10a. MODIFICATION OF CONTRACT/ORDER NO. SP0600-05-D-8017			
				10b. DATED (SEE ITEM 13) April 14, 2005			
BIDDER CODE:		CAGE CODE: 1NY39					
<b>11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS</b>							
<p>[ ] The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers [ ] is extended, [ ] is not extended _____.</p> <p>Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods: (a) By completing Items 8 and 15, and returning ___ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.</p>							
<b>12. ACCOUNTING AND APPROPRIATION DATA (If required)</b>							
<b>13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS, IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.</b>							
A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.							
X B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b)							
C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:							
D. OTHER (Specify type of modification and authority)							
<b>E. IMPORTANT:</b> Contractor [ X ] is not, [ ] is required to sign this document and return <u>1</u> copies to the issuing office.							
<b>14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)</b>							
The following is the billing address for Argonne:  US Department of Energy Argonne National Laboratory OCF BUD Building 201 9700 S. Cass Avenue Argonne, Illinois 60439							
Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.							
15A. NAME AND TITLE OF SIGNER (Type or print)				16A. NAME OF CONTRACTING OFFICER JAMES V. SHILLINGFORD			
15B. NAME OF CONTRACTOR/OFFEROR		15C. DATE SIGNED		16B. UNITED STATES OF AMERICA		16C. DATE SIGNED	
BY _____ (Signature of person authorized to sign)				BY  (Signature of Contracting Officer)		4/14/05	

**PART I****1. SUPPLIES TO BE FURNISHED (ELECTRICITY)**

(a) The contract quantities shown below are best estimates only of the Government's requirements for the contract period. The Contractor shall furnish all labor, material, tools, equipment, and incidentals to supply and deliver electricity as defined in the STATEMENT OF WORK/SPECIFICATIONS (ELECTRICITY) clause. Contract performance shall be accomplished in accordance with the terms and conditions of this contract.

(b) As used throughout this solicitation/contract, **kW** means kilowatt; **kWh** means kilowatt-hour; and **UDC** means Utility Distribution Company. Below are the acronyms and full names of each utility service area, the applicable NERC region; and those NERC Regions that border the applicable NERC Region:

**Applicable NERC Region:** PJM  
**Utility Service Area:** Commonwealth Edison

(c) The Government is soliciting offers for supply and transmission of electricity and ancillary services for the following locations:

Installation	Account Number	Line Item Number	Estimated Quantity in kWh	Awarded Unit Price	Extended Price
<b>Argonne Lab</b>	<b>556224009</b>	1705a			
		1705a (sp)	72,703,046	\$ 0.0753	\$5,474,539.36
		1705a (sf)	113,997,444	\$ 0.0365	\$4,160,906.71
		1705a (nsp)	97,110,875	\$ 0.0643	\$6,244,229.26
		1705a (nsf)	150,856,293	\$ 0.0384	\$5,792,881.65

**NOTE: THE DELIVERY PERIOD IS 19 MONTHS FROM MAY 2005 METER READ DATE THROUGH DEC 2006 METER READ DATE.**

Reference is made to Contractor's email correspondence dated 13 April 2005. Reference is also made to the terms and conditions of Solicitation SP0600-05-R-0402. All of the preceding documentation is hereby incorporated into and made part of this contract.

**2. STATEMENT OF WORK/SPECIFICATIONS (ELECTRICITY)**

(a) **STATEMENT OF WORK.** The Contractor shall furnish all labor, material, tools, equipment, and incidentals to supply and deliver electricity and any ancillary and/or incidental services required to deliver electricity to the point of delivery and for the scheduling and coordination of the delivery of electricity to the service point for each account under the contract. All quantities ordered by the Government shall be considered firm and guaranteed for delivery by the Contractor to the delivery point, and for scheduling and coordinating, for ultimate delivery to the service point for each account. Charges incurred as a result of the Contractor's failure to abide by the terms of the applicable Retail Access rules and/or the UDC Service Agreement shall be the responsibility of the Contractor. With the exception of any and all transmission and distribution related charges payable by the Government to the UDC under the applicable tariff for each account (unless said charges are the result of the Contractor's failure to perform in accordance with the contract), the Contractor is responsible for all costs associated with deliveries to the delivery point and the scheduling and coordination for delivery of electricity to the service point for each account under the contract. The Contractor shall be liable for any and all penalties and/or additional costs assessed to the Government for the nondelivery of the firm requirements in accordance with paragraphs (f) and (m) of the CONTRACT TERMS AND CONDITIONS - COMMERCIAL ITEMS clause.

(b) **INVOICE AND PAYMENT. DUAL BILLING:** The Government will utilize Dual Billing for all accounts in the above referenced territories awarded as a result of this solicitation. All invoicing shall be based

on meter quantities at the service point for each account. All costs associated with billing shall be included in the offered price. The Government will not pay any additional charges for billing services. The contractor may only invoice for charges allowed under the terms and conditions of the contract. Each invoice shall be prepared in a manner consistent with and shall conform to the state's utility regulatory agency/commission requirements for Dual Billing. In addition to the requirements set forth in FAR 52.212-4 CONTRACT TERMS AND CONDITIONS - COMMERCIAL ITEMS Paragraph (g), each contractor invoice shall include the following information:

- (1) Installation name, Line Item, and individual account information (Account Number, Meter Number, and Service Location)
- (2) Billing period for each account
- (3) Total consumption for each account (broken down by Peak, Off-Peak, Semi-Peak if applicable)
- (4) Demand information for each account (broken down by Peak, Off-Peak, Semi-Peak if applicable)
- (5) Total energy charge (broken down by energy charges and demand charges)
- (6) All information required by the ICC to be included on customer invoices.

NOTE: Supplier coordination with the local utility will be necessary to ensure that these customers receive identical billing data from both the supplier and the local utility (i.e. commodity and wires charges must be based on the utility's billing cycle).

For the purposes of this contract, the address designated to receive invoices in accordance with FAR 52.212-4 CONTRACT TERMS AND CONDITIONS--COMMERCIAL ITEMS (MAY 1999), paragraph (g), is considered to be that of the UDC in the service territory of which each account is located (i.e. the appropriate locations at ComEd, CILCO, Illinois Power, Ameren CIPS, Mid American).

For the purposes of this contract, the invoice to which reference is made in FAR 52.212-4, CONTRACT TERMS AND CONDITIONS--COMMERCIAL ITEMS (MAY 1999), paragraph (i) refers to the energy portion of the Consolidated UDC Invoice forwarded to the Government for payment by the UDC.

For the purposes of this contract, the payment to which reference is made in FAR 52.212-4, CONTRACT TERMS AND CONDITIONS--COMMERCIAL ITEMS (MAY 1999), paragraph (i) refers to the payment made by the Government against the Consolidated UDC Invoice.

(c) **METERING AND METER READING SERVICES.** Will be provided by the incumbent UDC for each account.

(d) **SCHEDULING AND SUPPLY MANAGEMENT.** It shall be the Contractor's responsibility to schedule deliveries for all accounts awarded for the time period specified herein. The Contractor shall be responsible for supply management and overall coordination of production, transmission, and distribution of electrical power to the service point of each account identified in the contract. As such, the Contractor shall be knowledgeable of and responsible for imbalance policies, transmission grid losses, transmission congestion charges and UDC line losses for the delivery of electricity to the service point of each account under the contract. The Contractor must meet all applicable State and Federal requirements necessary to successfully complete any contract. The Government will not pay any costs associated with the Contractor's failure to deliver electrical power at the delivery point sufficient to meet the demand at the service point of each account under the contract or to schedule and coordinate for the delivery of electricity to each service point.

(e) **RECORD KEEPING.** The Contractor shall keep records of data required to bill in accordance with the utility tariff of each account (demand and consumption data) in an electronic database format compatible with Microsoft Access or a spreadsheet format compatible with Microsoft Excel. These records shall be made available to DESC or to any party designated by DESC as authorized to request this data. In the event that the Contractor maintains records on demand and consumption data in addition to that required to bill in accordance with the utility tariff, said data shall also be made available to DESC or to any party designated by DESC as authorized to request this data.

(f) **ORDERING.** Orders shall be made in accordance with the ELECTRICITY ORDERING PROCEDURES clause.

(g) **POINT OF DELIVERY.** For this solicitation and any resulting contract, the delivery point for each account is defined as an interconnect with the UDC owned or controlled transmission or distribution systems.

(h) **SERVICE POINT.** For this solicitation and any resulting contract, the service point is defined as the meter(s) indicated for each account awarded as described in Attachment III, Block 2.

(i) **SPECIFICATIONS.** The electricity provided under this contract shall conform to the tariff of the transmitting and/or distributing utility at the delivery point(s) specified in the Schedule.

(DESC 52.246-9F25)  
C800 (DESC JAN 2003)

### 3. REQUIRED CENTRAL CONTRACTOR REGISTRATION

(a) **DEFINITIONS.** As used in this clause--

(1) **Central Contractor Registration (CCR) database** means the primary DoD repository for Contractor information required for the conduct of business with DoD.

(2) **Data Universal Numbering Systems (DUNS) number** means the 9-digit number assigned by Dun and Bradstreet Information Services to identify unique business entities.

(3) **Data Universal Numbering System + 4 (DUNS+4) number** means the DUNS number assigned by Dun and Bradstreet plus a 4-digit suffix that may be assigned at the discretion of the parent business concern for such purposes as identifying subunits or affiliates of the parent business concern.

(4) **Registered in the CCR database** means that all mandatory information, including the DUNS number or the DUNS+4 number, if applicable, and the corresponding Commercial and Government Entity (CAGE) code is in the CCR database; the DUNS number and the CAGE code have been validated; and all edits have been successfully completed.

(b) (1) By submission of an offer, the offeror acknowledges the requirement that a prospective awardee must be registered in the CCR database prior to award, during performance, and through final payment of any contract resulting from this solicitation, except for awards to foreign vendors for work to be performed outside the United States.

(2) The offeror shall provide its DUNS or, if applicable, its DUNS+4 number with its offer, which will be used by the Contracting Officer to verify that the offeror is registered in the CCR database.

(3) Lack of registration in the CCR database will make an offeror ineligible for award.

(4) DoD has established a goal of registering an applicant in the CCR database within 48 hours after receipt of a complete and accurate application via the Internet. However, registration of an applicant submitting an application through a method other than the Internet may take up to 30 days. Therefore, offerors that are not registered should consider applying for registration immediately upon receipt of this solicitation.

(c) The Contractor is responsible for the accuracy and completeness of the data within the CCR, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in the CCR database after the initial registration, the Contractor is required to confirm on an annual basis that its information in the CCR database is accurate and complete.

(d) Offerors and contractors may obtain information on registration and annual confirmation requirements by calling 1-888-227-2423 or via the Internet at <http://www.ccr.gov>.

(DFARS 252.204-7004)  
11.07 (NOV 2001)

### 4. TAILORED PARAGRAPHS OF FAR CLAUSE 52.212-4 CONTRACT TERMS AND CONDITIONS. ALL OTHER INSTRUCTIONS INCLUDED IN FAR 52.212-4 ARE HEREBY INCORPORATED BY REFERENCE (SEE BLOCK 27A OF STANDARD FORM 1449).

(f) **"Excusable delays".** The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, civil disturbance, hostile forces, terrorist acts or transmission failure. An Excusable Delay or similar event suffered by an Independent Service Operator ("ISO") (or an equivalent of an ISO) or a UDC (or EDC or TDSP) shall constitute an Excusable Delay hereunder. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any Excusable Delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly provide notice to the Contracting Officer of the cessation of such occurrence. Upon delivery of notice of the occurrence of an Excusable Delay, the obligations of the Contractor shall be suspended to the extent affected by such Excusable Delay.

**(k) Taxes.**

- (1) The contract price includes all applicable Federal, State, and Local taxes and duties in effect at contract signing.
- (2) After-imposed Federal, State or Local tax, as used in this clause, means any new or increased Federal, State or Local excise tax or duty, or tax that was exempted or excluded on the contract date but whose exemption was later revoked or reduced, or whose computation was later changed during the contract period, on the transactions or property covered by this contract that the Contractor is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the contract date. It does not include social security tax, other employment taxes, or income tax. The contract price shall be increased by the amount of any after-imposed Federal, State, or Local tax, provided the Contractor warrants in writing that no amount for such newly imposed Federal, State, or Local excise tax or duty or rate increase was included in the contract price, as a contingency reserve or otherwise.
- (3) After-relieved Federal, State or Local tax, as used in this clause, means any amount of Federal, State or Local excise tax or duty, that would otherwise have been payable on the transactions or property covered by this contract, but which the Contractor is not required to pay or bear, or for which the Contractor obtains a refund or drawback, as the result of legislative, judicial, or administrative action taking effect after the contract date. It does not include social security tax, other employment taxes, or income tax. The contract price shall be decreased by the amount of any after-relieved Federal, State, or Local tax.

- (l) **Termination for the Government's Convenience.** In accordance with all applicable state and local distribution company regulations, the Government reserves the right to terminate this contract with respect to any or all Contract Quantities, for its sole convenience. In the event of such termination, the Contractor shall cease deliveries hereunder with respect to such terminated Contract Quantities on the first allowable date subsequent to such termination according to the applicable tariff sheets of the local distribution company. The Contractor shall cause any and all of its suppliers and subcontractors to cease work related to this contract prior to the date and time specified by the Government for the termination. Subject to the terms of this contract, the Contractor shall be paid for electricity delivered under the contract prior to the date and time specified by the Government for the termination of any or all Contract Quantities plus any additional energy the Contractor is required to deliver for the Government's account under applicable local distribution company tariff sheets.

In the event of a termination for convenience, the Government shall pay the contractor the Termination Value, if positive, calculated by the following formula:

$$A = \Sigma (B - C) * D$$

Where:

A = Termination Value

B = Award Price for each usage period for each season

C = Forward Market Bid Price, defined herein

D = Contract Quantity for each usage period for each season (based on data listed in the Installation Data Sheets)

If the Termination Value on the date of termination is negative, the contractor shall not be entitled to any payment.

The Forward Market Bid Price shall be defined as NI Hub Forward Market Bid Prices (weighted using the load data provided in the installation data sheets), for a term equal to the remaining term of the contract. The Forward Market Price will be determined by the contractor in a commercially reasonable manner, which may include polling energy brokers on the date of termination. The Government shall have the right to reasonably audit Forward Market Price data obtained by the contractor.

In the event that the Government elects to terminate on a date other than at the end of a month or at the end of the summer / non-summer season as defined by applicable local distribution company and tariff, the estimated remaining contract quantity will be calculated by prorating the partial month or partial season of service.

In the event of a termination for convenience, the Government's liability shall be limited to the Termination Value calculated in accordance with the provisions of this clause.

- (n) **Title.** Title to the electricity supplied by the Contractor under this contract shall pass to the Government upon delivery at the delivery point specified in the Schedule. The Contractor warrants that the electricity delivered to the Government under this contract will be free and clear of all liens, claims and encumbrances arising prior to delivery at the delivery point specified in the Schedule.
- (o) **Warranty.** The Contractor warrants and implies that the electricity delivered hereunder conforms to the tariff of the transmitting and/or distributing utility at the delivery point specified in the Schedule.

FAR 52.212-4  
11.03-1 (JUNE 2003)

## 5. NOTIFICATION OF TARIFF/RATE CHANGES

Contractor shall use commercially reasonable efforts to provide Contracting Officer with written notice received by Contractor of any relevant changes to the UDC transportation tariff/rate or the scheduling of a tariff/rate hearing that would reasonably be expected to have any impact on the installations within a commercially reasonable time frame (ten (10) business days). Failure of the Contractor to comply with this provision shall not be grounds for Termination for Cause.

DESC H800 (JAN 1998)

## 6. EXTENSION PROVISIONS (ELECTRICITY) (DESC NOV 2003)

(a) For line items priced as other than Firm Fixed Price, the performance period can be extended for up to six months by mutual agreement of the parties.

(b) For line items priced as Firm-Fixed Price, the Government may request extension of performance, one or more times, at the existing fixed price and in accordance with the existing contract terms and provisions, so long as the total additional performance does not exceed six months. If the Contractor declines to extend at the existing price, the Government may propose a new firm-fixed price for the extension. Extension of Firm-Fixed Price line items must be accomplished by agreement of all parties (bilateral modification). Failure to agree will result in expiration of the contract at the end of the current performance period.

(DESC 52.217-9F50)  
DESC I209.15 (NOV 2003)

## 7. ELECTRICITY ORDERING PROCEDURES

For the purposes of this contract, the instantaneous load at the service point, as described in the individual Installation Data Sheets, shall constitute an order for electricity to be furnished under this contract.

(DESC 52.2169 FD6)  
DESC I800 (FEB 2002)

## 8. REQUIREMENTS

(a) This is a requirements contract for the supplies or services specified and effective for the period stated in the Schedule. The quantities of supplies or services specified in the Schedule are estimates only and are not purchased by this contract. Except as this contract may otherwise provide, if the Government's requirements do not result in orders in the quantities described as "estimated" or "maximum" in the Schedule, that fact shall not constitute the basis for an equitable price adjustment.

(b) Delivery or performance shall be made only as authorized by orders issued in accordance with the ORDERING clause. Subject to any limitations in the ORDER LIMITATIONS clause or elsewhere in this contract, the Contractor shall furnish to the Government all supplies or services specified in the Schedule and called for by orders issued in accordance with the ORDERING clause. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.

(c) Except as this contract otherwise provides, the Government shall order from the Contractor all the supplies or services specified in the Schedule that are required to be purchased by the Government activity or activities specified in the Schedule.

(d) The Government is not required to purchase from the Contractor requirements in excess of any limit on total orders under this contract.

(e) If the Government urgently requires delivery of any quantity of an item before the earliest date that delivery may be specified under this contract, and if the Contractor will not accept an order providing for the accelerated delivery, the Government may acquire the urgently required goods or services from another source.

(f) Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and Government's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period; PROVIDED, that the Contractor shall not be required to make any deliveries under this contract after December 2006 for Argonne National Laboratory.

(FAR 52.216-21)

184 (OCT 1995)

#### 9. ELECTRICITY PRICING FOR QUANTITIES OUTSIDE ESTABLISHED LOAD BANDWIDTH (ILLINOIS)

**NOTE: THIS CLAUSE ONLY APPLIES TO ACCOUNTS WITH INTERVAL METERS ONLY AND DOES NOT APPLY TO THE FERMI RETAIL BLOCK PURCHASE OPTION.**

(a) The Government may consume electricity within the allowable variance in consumption specified in the contract (bandwidth) without adjustment to the contract price. For each line item, applicable bandwidth is the range from 10 percent above to 10 percent below (for Jun through Sep meter read dates (summer months)) and from 30 percent above to 30 percent below (for Oct through May meter read dates (non-summer months)) the estimate of consumption included in the Installation Data Spreadsheets for the line item for that month. If, in any month, consumption of electricity falls outside the contract bandwidth for any line item, there shall be an adjustment to the contract price. The adjustment methodology is specified below.

(b) If, in any month, an Energy Deficiency occurs, an Energy Deficiency Adjustment shall be made. **Energy Deficiency** is the amount in kilowatt hours (kWh) by which consumption of electricity falls below the lower limit of the contract bandwidth for an installation for a month. **Energy Deficiency Adjustment** means the charge or credit calculated each monthly billing period for the Energy Deficiency. The Energy Deficiency Adjustment equals the Energy Deficiency times the average monthly contract price in dollars per kWh minus the Average Market Price for the month. The average monthly contract price for the month shall be determined as follows: the contract prices will be averaged over the on-peak and off-peak hours of the month weighted by the on-peak and off-peak hours in the month to calculate an average monthly contract price. The **Average Market Price for a month** is the sum of Daily Market Prices for that month divided by the number of days during the month. A **Daily Market Price** shall be determined as follows: (1) the hourly Real-Time LMP values for the NI Hub as posted on PJM's website will be averaged over the on-peak and off-peak hours of the day to calculate an average on-peak and off-peak value for that day; (2) the average on-peak and off-peak average values as calculated in (1) will be weighted by the number of on-peak and off-peak hours in the day (as defined by PJM) to calculate the Daily Market Price.

Expressed as a formula, the Energy Deficiency Adjustment is

$EDA = ED \times (CP - AMP)$  where--

EDA is the Energy Deficiency Adjustment, in dollars

ED is the Energy Deficiency, in kWh

CP is the contract price, in dollars per kWh

AMP is the Average Market Price, in dollars per kWh

The Energy Deficiency Adjustment shall be calculated following the monthly billing period in which the energy was consumed and included on the next monthly invoice. If the result is a positive number, then the Energy Deficiency Adjustment will be a charge to the customer; if the result is a negative number, then the Energy Deficiency Adjustment will be a credit to the customer.



(c) If, in any month, Excess Energy is consumed, an Excess Energy Adjustment shall be made. **Excess Energy** is the amount of electricity consumed above the upper limit of the contract bandwidth for an installation for a month. **Excess Energy Adjustment** means the charge calculated each monthly billing period for the Excess Energy. The Excess Energy Adjustment equals the Excess Energy times the Average Market Price in cents per kWh for the month minus the average monthly Contract Price in dollars per kWh plus an adder of 3 mills per kWh. The average monthly contract price for the month shall be determined as follows: the contract prices will be averaged over the on-peak and off-peak hours of the month weighted by the on-peak and off-peak hours in the month to calculate an average monthly contract price. The **Average Market Price** for a month is the sum of the Daily Market Prices for that month divided by the number of days during the month. A **Daily Market Price** shall be determined as follows: (1) the hourly Real-Time LMP values for the NI Hub as posted on PJM's website will be averaged over the on-peak and off-peak hours of the day to calculate an average on-peak and off-peak value for that day; (2) the average on-peak and off-peak average values as calculated in (1) will be weighted by the number of on-peak and off-peak hours in the day (as defined by PJM) to calculate the Daily Market Price.

Expressed as a formula, the Excess Energy Adjustment is

$$EEA = (EE (AMP \cdot CP + 0.002)), \text{ where--}$$

EEA is the Excess Energy Adjustment, in dollars

EE is the Excess Energy, in kWh

CP is the contract price, in cents per kWh

AMP is the Average Market Price, in cents per kWh

The Excess Energy Adjustment shall be calculated following the monthly billing period in which the energy was consumed and included on the next monthly invoice. If the EEA is positive then it will be a charge to the customer. If the EEA is negative then it will be a credit to the customer.

I801.100 (DESC AUG 2003)

#### 10. TYPE OF CONTRACT

The Government contemplates award of a Firm-Fixed-Price Requirements Type contract.

(FAR 52.216-1)

L74 (APR 1984)

#### 11. DISPUTES: AGREEMENT TO USE ALTERNATIVE DISPUTE RESOLUTION

(a) The parties agree to negotiate with each other to try to resolve any disputes that may arise. If unassisted negotiations are unsuccessful, the parties will use alternative dispute resolution (ADR) techniques to try to resolve the dispute. Litigation will only be considered as a last resort when ADR is unsuccessful or has been documented by the party rejecting ADR to be inappropriate for resolving the dispute.

(b) Before either party determines ADR inappropriate, that party must discuss the use of ADR with the other party. The documentation rejecting ADR must be signed by an official authorized to bind the contractor (see FAR 52.233-1), or, for the Agency, by the contracting officer, and approved at a level above the contracting officer after consultation with the ADR Specialist and with legal counsel (see DLA Directive 5145.1). Contractor personnel are also encouraged to include the ADR Specialist in their discussions with the contracting officer before determining ADR to be inappropriate.

(c) If you wish to opt out of this clause, check here [ ]. Alternate wording may be negotiated with the contracting officer.

FAR 52.233-1

DLAD 33.214 (JUN 2001)

#### 13. Regulatory Changes.

- (1) The contract price includes all applicable ISO/RTO charges and ICC fees to be in effect at contract signing.
- (2) After-imposed ISO/RTO charges and ICC fees, as used in this clause, means any new ISO/RTO charges and ICC fees subject to regulation that were exempted or excluded on the contract date but whose exemption was later revoked, on the transactions or property covered by this contract that the Contractor is required to pay or bear as the result of legislative, judicial or administrative action taking effect after the contract date. The contract price shall be increased by the amount of any after-imposed ISO/RTO charge (with no mark up), provided the Contractor warrants in writing that no amount for such newly after-imposed ISO/RTO charge was included in the contract price, as a contingency reserve or otherwise.
- (3) After-relieved ISO/RTO charges, as used in this clause, means any amount of ISO/RTO charges subject to regulation, that would otherwise have been payable on the transactions or property covered by this contract, but which the Contractor is not required to pay or bear, or for which the Contractor obtains a refund or drawback, as the result of legislative, judicial or administrative action taking effect after the contract date. The contract price shall be decreased by the amount of any after-relieved ISO/RTO charges.

#### 14. NOTICE OF LOAD CHANGES.

Customer agrees to make a commercially reasonable attempt to provide prior written notice to MidAmerican of any material changes in facilities, operating schedules, equipment, and/or such other factors which may affect Customer's usage of Electric Energy and Customer's Normal Electric Load Profile. The Government will attempt to provide an email to [ElectricForecasting@midamerican.com](mailto:ElectricForecasting@midamerican.com) or phone the on-call scheduler at 800-798-1722 to report the changes in the Customer's Electric Energy usage.